IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7631 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DP ENTERPRISE

Versus

GEB

Appearance:

1. Special Civil Application No. 7631 of 1999

MS KJ BRAHMBHATT for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

MR SP HASURKAR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 05/05/2004

ORAL JUDGEMENT

1. The petitioner has preferred the present writ

petition (in reality) under Article 227 of the Constitution of India challenging the order dated 22nd July, 1999 passed by the Appellate Committee of the Gujarat Electricity Board (hereinafter referred to as "the G.E. Board" for short), whereby the appellate authority of the G.E. Board has considered the fact that there was tampering of the electric meter already done by the petitioner and thereby the petitioner has committed theft of electrical energy. Therefore, additional bill for Rs.1,56,434-21 was issued by the G.E. Board.

2. It is contended by the learned advocate appearing for the petitioner that there was short-circuit at the factory premises of the petitioner on 21st January, 1998 and some damages were caused to the wires of the meter of the electric connection and therefore the application was made by the petitioner and thereafter the Officers of the G.E. Board had changed the wires of the said meter.

3. It is also contended by the learned advocate for the petitioner that while checking carried out by the officers of the G.E. Board. on 12th October, 1998 the meter of electric connection of the petitioner was found tampered with and therefore same was taken away by the officers of the G.E. Board under panchanama. Ultimately, the said meter was examined and the checking report dated 13th April 1999 was submitted which confirmed that there was tampering of the meter of electric connection of the petitioner and thereby meter-reading was showing lesser figure than what it ought to have. Method as to how the meter of electric connection of the petitioner was tampered has been narrated including the figure in the checking report dated 13th April, 1999 and therefore additional bill for Rs.3,44,363-31 ps. was issued.

4. It is also contended by the learned advocate for the petitioner that against the said additional bill, the appeal was preferred under relevant Rules and Regulation of the G.E. Board. Upon hearing the petitioner, at length, the detailed and reasoned order was passed by the Appellate Committee of the G.E. Board which is produced at page no. 34 to the memo of the petition and thereby the calculation of the G.E. Board was revised by applying A - B - C - D formula and on the basis of the factors newly fixed by the Appellate Committee additional bill of Rs.3,44,363-31 ps. was revised to the tune of Rs.1,56,434-21 ps. and the appeal was partly allowed.

5. It is also contended by the learned advocate for the petitioner that while calculating the factor 'D' the

authority below has not considered the averments of public holidays on which the factory of the petitioner had not run by the petitioner and instead of 3 there were 8 public holidays. Similarly, 24 hours' working as calculated by the Appellate Committee is also illegal and wrong because some time is wasting in going and coming and in loading and unloading the goods and the machines were not operated at a time and therefore diversity factor and load factor ought to have been revised. Thus, the calculation shown by the Appellate Committee of the G.E. Board in order dated 22nd July, 1999 deserves to be quashed and set aside.

6. Learned advocate appearing for the respondent submitted that on the date when checking was carried out at the factory of the petitioner on 12th October, 1998 and apparent and ostensible part of the meter was destroyed i.e. meter, body and seal were found doubt and therefore the said meter was taken at the laboratory and the same was inspected on 13th April, 1999. The Laboratory Report in respect of the electric meter of the petitioner states that MMB seal and meter body seals were tampered. A gap was found between meter body and its glass through which an X-ray film can be passed to disturb the meter reading. Scratches were found on digits of four counter drums. The said report is produced at page no. 22 to the memo of the petition. Therefore, it is proved that there was tampering with the meter of the electric connection by the petitioner. It is also contended by the learned advocate for the respondent that keeping in mind the arguments canvased by both the parties before the Appellate Committee, the diversity factor and load factor have been revised and the bill is revised for 'D' factor and 'C' factor and as per newly fixed factors by the appellate committee new bill comes to 1/3 of the original bill of Rs.3,44,363-31 ps. The new bill is revised on the basis of newly revised factors as suggested by the Appellate Committee which comes to Rs.1,56,434-21 ps. Thus, the bill has been reduced approximately by 66% by the Appellate Committee the G.E. Board. There is no error apparent on the face of the record nor has any error in the calculation and there is no further scope in reduction in the revised additional bill which is for Rs.1,56,434-21 ps. Therefore, the petition deserves to be dismissed.

7. I have carefully gone through the contents of the petition and the annexures annexed with the petition. It is constantly averred by the petitioner that he has not committed theft of electrical energy but because of short circuit on 21st January, 1998, damage was caused to the

meter of electric connection of the petitioner and hence the petitioner was not responsible for tampering with the meter.

8. In fact, looking to the laboratory report Annexure-D at page no.20 of the memo of the petition, it is clear that there was tampering with the meter of electric connection and gap was found between the meter body and its glass. Link between two parts of the meter which is popularly known as "male" and "female" in the said meter was found broken. In the seals of meter body No. L -10915 (G.B.) and L.10916 (G.B.), the details of tampering of the seals and some marks bruises have also been mentioned in the report of the laboratory. It is also mentioned in the said laboratory report that reverse lock was not working and there was tampering with the figures of the meter. This aspect of the meter has been considered by the Appellate Committee the G.E. Board. Similarly, the factors of public holidays and the fact that the factory was running for 24 hours etc. have also been considered by the Appellate Committee of the G.E. Board. Therefore, 'D' factor and 'C' factor i.e. diversity factor and load factor have also been revised.

9. Thus, looking to the facts and circumstances of the case, I see no reason to take any deviation from the conclusion arrived at by the Appellate Committee the G.E. Board. There is no error apparent on the face of the record and rightly the Appellate Committee of the G.E. Board has revised the factors as referred in its orders dated 22th July, 1999. The new bill issued on the basis of revised factors comes to Rs.1,56,434-21 ps. instead of original bill issued by the G.E. Board for Rs.3,44,363-31. In fact, keeping in mind the arguments advanced by the learned advocates for the parties, the original bill for Rs.3,44,363-31 has been reduced to Rs.1,56,434-21 ps. and there is reduction of approximately 66%.

10. In view of the above discussion, the present petition fails and accordingly the same is dismissed. Rule is discharged with no order as to costs. The amount paid by the petitioner towards additional bill shall be given set off and remaining amount of additional bill shall be paid by the petitioner with interest @ 6% p.a., within a period of 8 weeks from the date of receipt of writ of this Court.

(D.N. Patel, J.)

_/\/Satwara/